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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT CORDOVA,

Defendant and Appellant.

D060143

(Super. Ct. No. SCS239945)

APPEAL from a judgment of the Superior Court of San Diego County, George W. Clarke, Judge. Affirmed.

A jury found Robert Cordova guilty of driving or taking a vehicle in violation of Vehicle Code section 10851, subdivision (a). Cordova admitted allegations that he had suffered a strike prior (§§ 667, subds. (b)-(i); 1170.12) and four prison priors (§ 667.5, subd. (b)).

At the sentencing hearing, the court denied Cordova's *Romero*¹ motion to strike the prior strike, struck the punishment for the four prison prior enhancements, and

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

sentenced Cordova to the middle term of three years in state prison, which the court doubled under the Three Strikes law to six years.

Cordova appeals, contending the court committed reversible error when it denied his motion to suppress evidence of statements of denial he made to police during questioning before he was given a *Miranda*² warning. We conclude the court did not err. Accordingly, we affirm the judgment.

FACTUAL BACKGROUND

A. *The People's Case*

In mid-June 2010, noticing his keys were missing, Pedro Cortez searched his blue 1991 Honda Prelude. He thought he had left the keys hanging from the trunk, but could not find them. Cortez kept in the glove compartment both the car registration, which was in his name, and the proof of insurance, which was under the name of his wife, Adelina Olivera.

About two weeks later, at around 10:00 p.m. on June 27, Cortez, who had been driving the car with a spare key, heard the engine of his Prelude starting. He went outside and found the car was gone. He called the police and reported that his car had been stolen.

The next evening, June 28, when Cortez and Olivera were stopped at a red light in Olivera's car, Cortez saw his Prelude drive by. Cortez, who was sitting in the front passenger seat, told Olivera to follow the Prelude. The Prelude eventually pulled over to

² *Miranda v. Arizona* (1966) 384 U.S. 436.

the right side of the road in a residential area, and Cortez and Olivera slowly drove past it. As they drove past at about four or five miles per hour, the two cars were only about three or four feet apart. Cortez looked to his right and saw two men in the stolen Prelude. At trial, Cortez identified Cordova as the man he saw driving his Prelude. Cortez stated that his passenger-side window and Cordova's driver-side window were both down. As he and Olivera drove past the Prelude, Cordova looked at Cortez and Cortez looked at Cordova, face-to-face. Cortez noticed tattoos on the left side of Cordova's head and on his left shoulder. At trial, Cortez viewed the tattoo on the left side of Cordova's head and indicated it was the same tattoo he saw on Cordova's head on June 28, 2010.

Cortez testified that after he and Olivera drove past the Prelude, they pulled over and pretended they were parking before going into one of the houses. Soon thereafter, when Cordova drove the Prelude past their car at about eight to 10 miles per hour, Cortez and Olivera got a second look at Cordova.

Cortez called the police and reported that he had seen his stolen car. Cortez and Olivera then drove in the direction where the Prelude had gone and soon saw it parked with its hood open on the front lawn of a house. Cordova was standing in front of the Prelude holding a bottle of antifreeze. Cordova stared at Cortez and Olivera as they drove by. Cortez and Olivera drove to a convenience store where Cortez called the police and reported the address where they saw Cordova and the Prelude. The police arrived at the convenience store and drove Cortez and Olivera to that address. There, both Cortez and Olivera identified Cordova as the person they saw driving Cortez's Prelude earlier

that day. When Cortez got his car back, he found that his tools, car registration, and other documents were missing.

Shortly after receiving a dispatch about the sighting of the stolen Prelude, San Diego Police Officers Bryan Stephens and Joshua Olivo located the car parked on a lawn in a residential area. As other officers arrived, a resident of the house told Officer Stephens that her brother was staying there with her. She identified Cordova as her brother by giving his name and date of birth to Officer Stephens. A man came out of the house and told the officers that Cordova was inside the house in the bathroom.

Officers Stephens and Olivo entered the house along with Officer Terrence Bryan and Sergeant Manny Del Toro. Officer Olivo stayed in the living room, and the other three officers went down the hallway to the locked bathroom and announced, "San Diego police, Open up the door. We want to talk to you." One of the officers yelled, "Come out with your hands up." Cordova responded, "I'm in the shower," but Officer Stephens did not hear any running water inside the bathroom. Soon thereafter, Cordova opened the bathroom door. Cordova, who was wearing only a pair of boxer shorts, was not wet. Neither the bathtub nor the towel draped over a chair inside the bathroom was wet, and there was no condensation on the walls.

Officer Bryan handcuffed Cordova, who asked why the officers were there and why he was being handcuffed. One of the officers told Cordova he was being detained while the police investigated a stolen vehicle on the front lawn. Cordova responded that he did not know anything about the vehicle, and he did not know what the officers were talking about.

After Cordova was escorted away from the bathroom, Officer Stephens picked up a pair of shorts he found in the bathroom. No one else entered or exited the bathroom after Cordova was escorted out. Inside a pocket of those shorts, Officer Stephens found a ring of keys. Cortez identified the keys as the ones he lost before his Prelude was stolen. Olivera also recognized the keys as the ones Cortez lost before the Prelude was stolen.

The court informed the jury it was taking judicial notice that Cordova was continuously outside San Diego County from March 4, 2010, until June 10, 2010.

B. The Defense

Cordova did not present any evidence.

DISCUSSION

Cordova contends the court committed reversible error when it denied his motion to suppress evidence of his denials to police questioning before he was given a *Miranda* warning. We conclude the court did not err.

A. Background

Cordova moved to suppress evidence of denials (discussed, *post*) that he made to police officers after they arrived at his residence on June 28, 2010. The court held an Evidence Code section 402 hearing on the motion and received testimony from Officers Olivo, Bryan, and Stephens.

Officer Olivo's testimony

Officer Olivo testified that in the early evening on June 28, 2010, he and Officer Stephens were driving in a marked patrol car looking for the stolen Honda Prelude when they were directed to a home on Alaquinas Drive. When they arrived, they saw the

Prelude parked on the front lawn. They then called for more officers and set up a perimeter. Officer Bryan, Sergeant Del Toro, and a number of other officers soon arrived at the scene.

While Officers Olivo and Stephens were waiting for the other officers, a woman arrived in her car and told them she lived in the house along with Cordova, who was on parole. Using the name and birth date she gave them, the officers checked records and verified Cordova's identity, parole status, and prior conviction concerning a stolen vehicle. The woman indicated she did not know anything about the car, and she did not know if it belonged to Cordova.

According to Officer Olivo, a man came out of the house after other officers arrived and told them Cordova was inside in the bathroom. At least five of the officers entered the house through the front door into the living room. During the entry, one of the officers announced their presence by yelling, "San Diego Police. Come out with your hands up." The man who had come out of the house to speak to the officers came back in and pointed to the location of the bathroom down a short hallway. Officer Olivo stayed in the living room while other officers, including Officer Bryan, went to the bathroom door.

Officer Olivo testified that the other officers took Cordova, who was only wearing underwear, out of the bathroom without a struggle and handcuffed him in the hallway or living room area. Officer Olivo also testified that he and the other officers knew Cordova was on parole, and Cordova "wasn't under arrest at that point at all. We just wanted to detain him to investigate the stolen vehicle on the lawn." Although Officer Olivo could

not remember the exact language that was used, he remembered that when one of the officers asked Cordova about the Prelude, Cordova said something like, "It is not my car. I don't know what you are talking about." Officer Olivo characterized the questioning about the car as "a casual asking [of Cordova about] what's going on with that car."

After Cordova was handcuffed, the officers escorted him outside and continued the investigation by again asking him whether he knew anything about the Prelude. Shortly thereafter, two witnesses, including the victim (Cortez), arrived for a curbside lineup and identified Cordova as the man they saw driving the Prelude. According to Officer Olivo, once Cordova was identified during the curbside lineup, the officers "didn't proceed with the questioning." Once Cordova was identified, Officer Olivo assisted in formally placing him under arrest. The arresting officers informed Cordova they were taking him to the police station.

On cross-examination, Officer Olivo testified he did not hear any *Miranda* warnings until after Cordova was under arrest.

Officer Bryan's testimony

Officer Bryan testified that when he arrived at the house on Alaquinas Drive to investigate a vehicle theft, he saw the stolen Prelude parked on the front lawn. He and the other officers who had arrived at the scene set up a perimeter because they believed the driver of the Prelude had fled into the house. A woman drove up and gave the officers the name of someone who lived there, and the officers checked some records and found that a parolee with priors for auto theft (Cordova) lived there. An older man, who

Officer Bryan believed might have been Cordova's father, came out of the house and told the officers that Cordova was inside the house.

Officer Bryan and other officers announced their presence by saying, "San Diego police" and entered the house. Officers Bryan and Stephens and Sergeant Del Toro went to the bathroom door with the older man, who knocked on the door and called out to Cordova, "Come on out. The police are here." Cordova replied, "I'm taking a shower." Officer Bryan testified he heard no running water.

Officer Bryan and the other officers continued to demand that Cordova leave the bathroom and, shortly thereafter, Cordova opened the locked door and said something like, "I was in the shower. What is this about?" The officers escorted Cordova out of the bathroom and Officer Bryan handcuffed him. Officer Bryan testified that when he looked in the shower, he did not see any running water and the tub basin was not wet.

Officer Bryan testified that he heard Sergeant Del Toro say something to the effect that "[w]e are investigating an auto theft, and we need to talk to you about that." Cordova responded, but Officer Bryan did not hear what Cordova said. Officer Bryan stated he did not have much contact with Cordova when he was escorted out of the house, and he did not hear any statements Cordova made about the stolen Prelude.

Officer Bryan also testified, "In my mind, at the time I handcuffed [Cordova], he was being detained while we investigated this auto theft."

Officer Stephens's testimony

Officer Stephens testified that in the early evening on June 28, 2010, he and Officer Olivos were driving on patrol when they were directed to a home on Alaquinas

Drive to investigate a vehicle theft. The officers noticed the car described in the call parked partially on the lawn. A woman drove up, identified herself as Cordova's sister, gave the officers Cordova's birth date, and told them he had recently been paroled and was staying in her home.

Officer Stephens testified that a records check confirmed Cordova recently had been paroled, and the records check "came back with multiple auto theft charges and various other criminal charges." He and other officers entered the house after announcing their presence, and a man told them Cordova was in the bathroom. The man then led them to the bathroom, knocked on the door, and said, "Hey, Robert, the police are here to talk to you." The officers also announced their presence outside the bathroom.

When Cordova eventually opened the bathroom door, Officer Stephens observed he was only wearing boxer shorts. Officer Bryan handcuffed Cordova. One of the officers, whose identity Officer Stephens could not remember, told Cordova he was being detained while they investigated the stolen vehicle parked in the front of the house. Cordova denied any knowledge of that vehicle. He was then taken outside the house.

Officer Stephens, who had stayed inside the house, testified he went into the bathroom to "look for evidence tying [Cordova] to the vehicle." He found a pair of gym shorts on the shower floor and did not remember seeing any other clothes in the

bathroom. Inside a pocket of those shorts, Officer Stephens found some keys, including a key to the stolen Prelude.³

Later, as officers were about to put Cordova into a patrol car, Officer Stephens asked him whether he wanted a pair of shorts, and Cordova responded that he did. Officer Stephens asked Cordova whether the shorts in the bathroom would be all right, and Cordova said, "What shorts?" When Officer Stephens described the shorts, Cordova said, "Those aren't mine." Officer Stephens testified that his asking Cordova about the shorts "was more to get him to admit ownership of the shorts" in order to "tie him to the [Prelude]."

Officer Stephens later read Cordova his *Miranda* rights and took him to the police station.

Oral arguments

After the officers testified, defense counsel argued in support of Cordova's suppression motion that Cordova was placed under arrest by uniformed and armed police officers when he was handcuffed immediately after he came out of the bathroom in his boxer shorts and then led out of the house and a reasonable person in Cordova's position would not have felt free to leave. Defense counsel stated that "any questioning [of Cordova] after that point is a violation of *Miranda*," and any statements Cordova made following the handcuffing should be excluded.

³ At trial, Cortez identified the keys as the ones he lost before his Prelude was stolen. Olivera also recognized the keys as the ones Cortez lost.

The prosecutor argued the suppression motion should be denied because Cordova was lawfully detained, not arrested, when he was taken out of the bathroom and handcuffed while the officers conducted a police investigation. The evidence of Cordova's denials was admissible, the prosecutor argued, both because Cordova was not in custody when he made his denials and because he spontaneously volunteered those statements.

Ruling

After hearing defense counsel's and the prosecutor's arguments, the court ruled that all statements that Cordova made before his identification during the curbside lineup outside the house were admissible "as part of a detention by the officers," and any statements he made after he was transported to the police station would be suppressed. The court found that the "objective indicia of arrest" were not present "until after the two lineup identifications were made by the two eyewitnesses."

B. Applicable Legal Principles

The Fifth Amendment to the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." The California Supreme Court has explained that "[i]n *Miranda*, the court laid down a rule of a 'prophylactic' nature [citation] in order to protect the privilege against self-incrimination of the Fifth Amendment to the United States Constitution, as applied to the states through the due process clause of the Fourteenth Amendment: '[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant [by law enforcement officers] unless it demonstrates the use of procedural

safeguards effective to secure the privilege against self-incrimination. . . . Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.' " (*People v. Waidla* (2000) 22 Cal.4th 690, 726-727, quoting *Miranda, supra*, 384 U.S. at p. 444.) Thus, when a person is subjected to a custodial interrogation by the police, the person's statements are inadmissible to prove guilt if the police failed to give *Miranda* advisements prior to the questioning. (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1161 (*Aguilera*).)

In *Rhode Island v. Innis* (1980) 446 U.S. 291, 300-302, the United States Supreme Court defined the term "interrogation," stating that "the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. . . . A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation." (Fns. omitted.) Volunteered statements that were not the product of interrogation are admissible. (*People v. Edwards* (1991) 54 Cal.3d 787, 815.)

"Custody determinations are resolved by an objective standard: Would a reasonable person interpret the restraints used by the police as tantamount to a formal

arrest?" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403 (*Pilster*).) "In determining whether an individual was in custody [during a police interrogation], a court must examine all of the circumstances surrounding the interrogation, but 'the ultimate inquiry is simply whether there [was] a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.'" (*Stansbury v. California* (1994) 511 U.S. 318, 322.) Among the circumstances relevant to a custody determination are the location, length, and character of the questioning; whether the police informed the person questioned that he or she did not have to answer the questions and/or was free to leave; and whether the police released the person at the end of the questioning. (*Yarborough v. Alvarado* (2004) 541 U.S. 652, 664.) Other relevant circumstances include the number of police officers who participated and the physical restraints used, if any. (*Pilster, supra*, at pp. 1403-1405; *Aguilera, supra*, 51 Cal.App.4th at p. 1162.) "No one factor is dispositive." (*Aguilera*, at p. 1162.)

A person temporarily detained for investigation is generally not in custody for *Miranda* purposes. (*Berkemer v. McCarty* (1984) 468 U.S. 420, 439-440; *People v. Farnam* (2002) 28 Cal.4th 107, 180 ["[T]he term 'custody' generally does not include 'a temporary detention for investigation' where an officer detains a person to ask a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions."]; *People v. Clair* (1992) 2 Cal.4th 629, 679 [custody absent where an officer, with his gun drawn, approached defendant at an apartment crime scene to ask who he was, whether he had identification and lived in the apartment, what he was doing in the apartment, and whether he knew the residents].)

1. *Standard of review*

The standard of review that governs an appellate court's determination regarding a claim that a statement or confession was inadmissible because it was obtained in violation of a defendant's *Miranda* rights is well-established. "We must accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported." (*People v. Boyer* (1989) 48 Cal.3d 247, 263, cert. den. sub nom. *California v. Boyer* (1989) 493 U.S. 975, disapproved on another point in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

"However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained." (*People v. Boyer, supra*, 48 Cal.3d at p. 263; see also *People v. Box* (2000) 23 Cal.4th 1153, 1194, disapproved on another ground in *People v. Martinez* (2010) 47 Cal.4th 911, 948, fn. 10.)

C. *Analysis*

Cordova contends the court erred by denying his suppression motion because he was "subject to a custodial interrogation" when an officer handcuffed him outside the bathroom and he was asked about the stolen Prelude parked in front of his residence. He asserts "the handcuffing was not temporary or brief; [he] was not merely a witness, but was instead the focus of the officer's investigation; and the officers did not advise [him] he could decline to answer the question about the car, or that he was free to leave and would not be arrested." Cordova also asserts that "[w]ithout [his] denial . . . of any knowledge of the stolen car, the only evidence introduced by the prosecution—that [he]

was driving the car, that the car was recently stolen, and that the owner's keys were found in [his] gym shorts—fails as a matter of law to prove that [he] intended to deprive the owner of possession or ownership of his car."

Acknowledging that his "possession of the car which was stolen the day before raises a strong inference that [he] knew the car was stolen," he maintains there is no corroborating evidence to show his specific intent "if [his] statement denying any knowledge of the car is suppressed."

Cordova also contends that, "[a]lthough there is sufficient evidence [he] was driving the stolen car without Cortez's consent the day after the theft, there is no evidence [he] knew either that he did not have [Cortez's] consent or that the car had been stolen at the time," and there is no evidence "of behavior by [him] that would indicate consciousness of guilt."

Cordova's contentions are unavailing. After independent review, we conclude the court did not err in denying Cordova's suppression motion because substantial evidence shows, as the court correctly found, that the objective indicia of arrest were not present until after the curbside eyewitness identifications were made in front of Cordova's residence. The evidence presented at the motion hearing shows that at least five police officers entered Cordova's residence, and one of the officers yelled, "Come out with your hands up." Officer Bryan handcuffed Cordova immediately after Cordova opened the bathroom door. Sergeant Del Toro told Cordova, "We are investigating an auto theft, and we need to talk to you about that." Without first being advised of his *Miranda* rights, Cordova replied, "It is not my car. I don't know what you are talking about." No

evidence was presented to show the officers advised Cordova that he could decline to answer questions about the car or that he was free to leave and would not be arrested.

However, as already noted, Sergeant Del Toro informed Cordova that he and the other officers were only *investigating* an auto theft. Also, it is undisputed that Cordova was not formally placed under arrest and told he was being taken to the police station until after Cortez and Olivera both identified him curbside as the man they saw driving the stolen Prelude earlier that day.

The one circumstance that makes this case close is Officer Bryan's decision to handcuff Cordova. A reasonable person would tend to associate handcuffing with a formal arrest. (*Pilster, supra*, 138 Cal.App.4th at pp. 1404-1405.) As already discussed, however, no one circumstance is dispositive. (*Id.* at p. 1404; *Aguilera, supra*, 51 Cal.App.4th at p. 1162.) We conclude the pre-*Miranda* questioning of Cordova occurred during an investigative detention, and thus the officers did not obtain his statements of denial in violation of *Miranda*.

Even if we were to assume *arguendo* that the court erred by denying Cordova's suppression motion, we would conclude reversal is not required because any such error was harmless beyond a reasonable doubt within the meaning of *Chapman v. California* (1967) 386 U.S. 18, 24.⁴ Cordova was convicted of driving or taking Cortez's Prelude in

⁴ Under the *Chapman* harmless error standard, "an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 681; see *Chapman v. California, supra*, 386 U.S. at p. 24.)

violation of Vehicle Code section 10851, subdivision (a). "To establish a defendant's guilt of violating Vehicle Code section 10851, subdivision (a), the prosecution is required to prove that the defendant drove or took a vehicle belonging to another person, without the owner's consent, and that the defendant had the specific intent to permanently or temporarily deprive the owner of title or possession." (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1574, fn. omitted.) "Knowledge that the vehicle was stolen, while not an element of the offense, may constitute evidence of the defendant's intent to deprive the owner of title and possession." (*Ibid.*) "Possession of recently stolen property itself raises a strong inference that the possessor knew the property was stolen; only slight corroboration is required to allow for a finding of guilt." (*Ibid.*) "[T]he slight corroboration that permits an inference that the possessor knew that the property was stolen may consist of no explanation, of an unsatisfactory explanation, or of other suspicious circumstances that would justify the inference." (*Id.* at p. 1575, citing *People v. McFarland* (1962) 58 Cal.2d 748, 754.)

Here, overwhelming evidence independent of the evidence of Cordova's pre-*Miranda* denials establishes that he took Cortez's Prelude and drove it without Cortez's consent and with the requisite intent to deprive Cortez of possession. Cordova concedes on appeal that "there is sufficient evidence [he] was driving the stolen car without Cortez's consent the day after the theft," and his possession of the Prelude the day after it was stolen "raises a strong inference that [he] knew the car was stolen." Both Cortez and Olivera testified they saw Cordova driving the stolen Prelude, and at trial both indicated that the tattoos on the side of his head were the same tattoos they observed on the side of

the head of the man they saw driving the Prelude. Officer Stephens testified that after Cordova was escorted away after coming out of the bathroom wearing only his boxer shorts, he (Officer Stephens) picked up a pair of gym shorts he found discarded in the bathroom and found a ring of keys in one of the pockets. No one else had entered or exited the bathroom after Cordova was taken out. At trial, Cortez identified the keys as the ones he lost before his Prelude was stolen. Olivera also recognized the keys as the ones Cortez had lost before the Prelude was stolen.

Based on the foregoing substantial evidence, a rational jury could reasonably find beyond a reasonable doubt that Cordova was guilty of driving or taking Cortez's Prelude in violation of Vehicle Code section 10851, subdivision (a). Accordingly, we conclude that any error in admitting Cordova's pre-*Miranda* statements was harmless beyond a reasonable doubt.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.